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No. 401

In the Supreme Court of the United States

OCTOBER TERM, 1960

LOCAL 1566, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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The Board has filed a petition for certiorari to review the decision of the Court of Appeals in this case insofar as it denies enforcement of the reimbursement provisions of the remedy prescribed by the Board for the hiring arrangement which it and the Court found to be illegal. *National Labor Relations Board* v. *Local 1566, International Longshoremen's Association*, No. 285, this Term. That petition was filed to preserve the Board's position that it possesses authority to prescribe such remedy for an illegal

hiring arrangement, pending a resolution of the question in *Local 60, United Brotherhood of Carpenters* v. *National Labor Relations Board*, and *National Labor Relations Board* v. *Local 357, International Brotherhood of Teamsters*, Nos. 68 and 85, this Term, certiorari granted June 27, 1960. The instant cross-petition seeks to obtain review of the Board's unfair labor practice findings which were sustained by the court below.

We submit that the cross-petition should be denied. The issues presented therein are wholly evidentiary. Since the court below has found that the Board's findings are supported by substantial evidence, there is no occasion for further review.

The cross-petition presents, in substance, two questions: (1) whether there is substantial evidence to support the Board's finding that, despite the "deferral clause" in the contracts purporting to postpone operation of the illegal preference system specified therein, the Company and the Union intended to, and did, place it in effect immediately; and (2) whether there is substantial evidence to support the Board's finding that the Union was responsible for the discriminatory hiring practices engaged in by the union-member foremen. The facts of record, as summarized in the Board's petition in No. 285, pp. 4-7, and detailed in the opinion of the Court of Appeals (Cross-pet. 2a-7a), furnish adequate support for both of these findings.

In brief, the record shows that the hiring of longshoremen was effected through the "shape-up" system whereby the selection of those to be hired was exclu-

sively within the authority of the foremen; that in making their selection the foremen gave first preference to union-member "bookmen" and second preference to union-approved "card-men"; that such preference in hiring was established as a policy by the Union constitution which the foremen, as union members, were obligated under penalty of discipline to obey; and that it was also provided for in the union security clauses of the 1954 and 1957 contracts, although ostensibly deferred pending a ruling on their legality. On these facts, the Board was amply justified in finding that, despite the deferral clause, the union-security clauses in the contracts were executed with the present intent to create discriminatory conditions of employment in accord with established Union policy, and that the Union was chargeable with the discrimination practiced by its member-foremen.[1]

In view of the factual findings, sustained by the court below, that the union-security provisions of the contract were actually put into effect in an illegal manner, this case does not present the issue involved in the *News Syndicate*, No. 339, this Term, and related cases cited in the cross-petition (pp. 9-15) of whether a general savings clause is sufficient to apprise the employees whether or not an illegal union-

[1] The Board also found that the union security clause of the 1957 contract was independently unlawful, in that the Union had not complied with the filing requirements of the Act at the time the agreement was executed (Pet. in No. 285, p. 8). That finding alone, which petitioner does not here challenge, would be sufficient to support virtually all of the Board's order in this case.

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security provision is incorporated in the contract. Similarly, in view of the evidence that the foremen in fact carried out the Union's discriminatory policy, no question is presented (Cross-Pet. 16-21) as to the propriety of inferring discrimination, or of holding the Union responsible therefor, merely on the basis of the foreman's union membership.

For these reasons, the cross-petition for certiorari should be denied.

Respectfully submitted.

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